

SENATE RECORD VOTE ANALYSIS

104th Congress
2nd Session

Vote No. 80

April 24, 1996, 3:44 p.m.
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ILLEGAL IMMIGRATION/Open-Field INS Searches

SUBJECT: Immigration Control and Financial Responsibility Act of 1996 . . . S. 1664. Simpson amendment No. 3730 to the Simpson amendment No. 3725 to the Simpson motion to recommit with instructions.

ACTION: AMENDMENT REJECTED, 20-79

SYNOPSIS: As reported, S. 1664, the Immigration Control and Financial Responsibility Act of 1996, will address the issue of illegal immigration: by increasing the number of Border Patrol and investigative personnel; by establishing pilot programs to improve the system used by employers to verify citizenship or work-authorized alien status; by increasing penalties for alien smuggling and document fraud; by reforming asylum, exclusion, and deportation laws and procedures; and by reducing the use of welfare by aliens.

The Simpson motion to recommit with instructions would direct the Judiciary Committee to report the bill back forthwith.

The Simpson amendment to the instructions to the Simpson motion to recommit would direct the Committee to add a section to the bill that would require non-immigrants who entered the United States on student visas in order to attend elementary or secondary school to pay the costs of that attendance unless the school waived that payment. Further, failure of a student on a student visa to remain enrolled in school would be grounds for deportation and exclusion.

The Simpson second-degree perfecting amendment to the Simpson amendment would strike the current prohibition on the Immigration and Naturalization Service (INS) from entering an open field to enforce immigration laws without first obtaining a search warrant.

Those favoring the amendment contended:

In the 1986 immigration bill agricultural producers and the American Civil Liberties Union joined together in pressuring Congress into enacting a ban on Immigration and Naturalization Service (INS) open-field searches for illegal aliens. Since 1986, the INS has needed either the permission of the property owner or a search warrant before it has been allowed to go onto farms to find illegal

(See other side)

YEAS (20)		NAYS (79)				NOT VOTING (1)	
Republicans (9 or 17%)	Democrats (11 or 24%)	Republicans (44 or 83%)		Democrats (35 or 76%)		Republicans (0)	Democrats (1)
Chafee	Bryan	Abraham	Hatfield	Akaka	Harkin		Heflin- ²
Grassley	Byrd	Ashcroft	Helms	Baucus	Inouye		
Gregg	Glenn	Bennett	Hutchison	Biden	Kennedy		
Murkowski	Hollings	Bond	Inhofe	Bingaman	Kerrey		
Simpson	Johnston	Brown	Jeffords	Boxer	Kerry		
Stevens	Lautenberg	Burns	Kassebaum	Bradley	Kohl		
Thomas	Levin	Campbell	Kempthorne	Breaux	Leahy		
Thompson	Lieberman	Coats	Kyl	Bumpers	Mikulski		
Thurmond	Nunn	Cochran	Lott	Conrad	Moseley-Braun		
	Reid	Cohen	Lugar	Daschle	Moynihan		
	Rockefeller	Coverdell	Mack	Dodd	Murray		
		Craig	McCain	Dorgan	Pell		
		D'Amato	McConnell	Exon	Pryor		
		DeWine	Nickles	Feingold	Robb		
		Dole	Pressler	Feinstein	Sarbanes		
		Domenici	Roth	Ford	Simon		
		Faircloth	Santorum	Graham	Wellstone		
		Frist	Shelby		Wyden		
		Gorton	Smith				
		Gramm	Snowe				
		Grams	Specter				
		Hatch	Warner				

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

aliens. No other law enforcement agency is so restricted. The reason farmers wanted this restriction was to make it difficult to catch farmers who employ illegal aliens. Many farmers do not believe they can survive economically without hiring such workers at extremely low wages.

Some Senators have suggested that before the INS was banned from performing open-field searches it would often search fields simply because it saw a large number of workers with darker skin, who were thus presumably hispanic illegal aliens. They then have gone on to suggest that the requirement that the INS obtain a search warrant or permission before making a search has stopped the problem of unfair searches while at the same time it has not ever, to their knowledge, resulted in warrants being unjustifiably obtained. These suggestions are contradictory. Before the warrant requirement was imposed, INS officials still needed probable cause before they could enter a field--conducting a search based on the color of skin of the workers was illegal. Similarly, obtaining a search warrant under false pretenses was, and is, illegal. Thus, our colleagues say that INS officials were willing to break the law before the warrant requirement was in place but that they are not willing to break it now. This contention is ridiculous. Placing any restrictions on the INS's ability to enforce the law will not affect in any manner the honesty or dishonesty of INS officers; all it will do is make it more difficult for them to do their jobs.

Due to the difficulty in enforcing the immigration laws on farms that is caused by the warrant requirement, fully 40 percent of the agricultural workers on the West Coast are now illegal aliens. The issue of abuses by the INS is a red herring--the INS has always held to the highest law enforcement standards. To the extent that there are a few abuses, as there will be in any law enforcement agency, the proper course is to discipline those responsible, not to gut the ability of the agency to fulfill its mission. The Simpson amendment would remove the unjust warrant requirement that is crippling the ability of the INS to enforce the law. We urge our colleagues to give it their support.

Those opposing the amendment contended:

In 1986 15 percent of the illegal immigration workforce was employed in the agricultural sector. Seventy-five percent of all INS searches for illegal immigrants, though, were on farms. The reason why was that it was much easier for it to make those raids because it did not need a search warrant. Before making a raid on a factory, restaurant, or other common place of employment for illegal aliens, it had to obtain a warrant by first convincing a judge that it had probable cause for believing that illegal aliens were actually working at a particular place of employment. For farm raids, though, all it had to do was look for foreign-looking workers out in a field.

This situation caused considerable disruption for farms and for American citizens who had the misfortune of looking foreign to INS officers. For instance, we know of one case in which agents raided the same farm four times in one month in Othello, Washington. The only people arrested were two Japanese workers, who were later able to prove that they were lawfully in the country and were eligible to work. For farmers, when it is time to harvest a crop there is often just a very small window of opportunity. Grain must be harvested and other crops must be picked within a few-days timeframe. Disruptions like INS trucks chasing their workers who look foreign through their fields can delay harvesting (as well as cause crop damage) and can thus result in substantial losses.

Some Senators have pointed out that the INS is the only law enforcement agency that needs a warrant to go into a field when it sees something which gives it probable cause to believe a crime has been or is being committed. The reason why is obvious. Other law enforcement agencies are looking for people who are guilty of such crimes as murder, rape, or theft. They do not just walk into fields at random looking either for evidence or the perpetrators of such crimes. Seeing a body in a field is much different than seeing a dark-skinned worker picking crops. Comparing the INS with other law enforcement agencies is thus comparing apples and oranges.

The Simpson amendment would take us back to the old days when the INS was allowed to charge onto private property and arrest anyone who was not carrying documents proving they were not illegal aliens. The INS could not enter any enclosed facility like a barn without a warrant, but as long as a field did not have a roof the fourth amendment protection against unreasonable searches and seizures did not apply. We should not return to those days. The same protections that apply to people who work indoors should apply to people who work outdoors. The Constitution should apply to everybody. Therefore, we oppose the Simpson amendment to repeal the current warrant requirement.